



## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

November 30, 2011

### **S. 75**

### **Discount Pricing Consumer Protection Act**

*As reported by the Senate Committee on the Judiciary on November 3, 2011*

S. 75 would prohibit agreements between manufacturers and wholesalers, distributors, or retailers to set minimum prices for a product or service. The bill would negate the effects of a 2007 Supreme Court decision (*Leegin Creative Leather Products, Inc. v. PSKS, Inc.*, 551 U.S. 877) that permits minimum-price agreements in certain cases.

Based on information from the Department of Justice, CBO estimates that implementing the bill would have no significant effect on the department's spending to handle cases involving minimum-price agreements.

Pay-as-you-go procedures would apply to the legislation because violators of the bill's provisions could be subject to civil and criminal fines. Criminal fines are deposited as revenues in the Crime Victims Fund and later spent. However, CBO estimates that any additional revenues and direct spending would not be significant in each year.

S. 75 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Prohibiting minimum-price agreements would impose a private-sector mandate as defined in UMRA. Under the bill, existing or future agreements that set such prices would be a violation of antitrust law.

The cost of that mandate would be the forgone net income resulting from prohibiting such agreements; however, how such prohibitions would affect industry income is uncertain for several reasons. On the one hand, a large number of firms could be affected by the mandate, although contracts involving pricing policies are confidential and can vary widely across markets. On the other hand, the cost of the mandate would be mitigated to some extent because several states already prohibit such contracts and because firms could continue to use noncontractual policies that have the effect of setting minimum resale prices. Because we cannot determine the net impact of those effects, CBO cannot determine whether the cost

of the mandate would exceed the annual threshold established in UMRA for private-sector mandates (\$142 million in 2011, adjusted annually for inflation).

The CBO staff contacts for this estimate are Mark Grabowicz (for federal cost) and Marin Randall (for the private-sector impact). The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.